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IN THE
Supreme Court of the United States
OCTOBER TERM, 1944

No. 359

STATE OF MINNESOTA,

Petitioner,

vs.

TRUSTEES OF THE HAMLINE UNIVERSITY OF MINNESOTA, A CORPORATION.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA.

**BRIEF FOR TRUSTEES OF THE HAMLINE UNIVERSITY
OF MINNESOTA IN OPPOSITION**

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**BRIEF FOR TRUSTEES OF THE HAMLINE UNIVERSITY
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THE FACTS

Chapter 43 of the Laws of the Territorial Assembly of Minnesota for 1854 granted to "Trustees of the Hamline University of Minnesota" (hereinafter for convenience called the respondent) a charter to conduct an educational institution (R. 112-119). Section 11 provided that "all corporate property belonging to the institution, both real and personal is, and shall be free from taxation". The charter was accepted by respondent (R. 180) and a preparatory depart-

ment was opened on November 16, 1854, and the college proper in 1857 (R. 36, 37). Until 1869 this was the only institution of college rank in Minnesota (R. 67). By 1867 it had sent out upwards of 200 teachers to the common schools (R. 54). The school was beset with financial difficulties throughout, and in 1869 the trustees, pursuant to the provision of the charter (section 4) that they shall at no time "be required to exceed the means under their control", suspended the teaching functions (R. 69-71). During these and following years respondent suffered from the consequences of the depression following the Civil War, financial panics, grasshopper and other insect plagues, low prices for agricultural products, and general hard times; but it continuously and persistently solicited pledges and raised funds, obtained legislation to permit change of location, acquired lands and erected buildings, all of which resulted in the resumption of the teaching functions in a new location with substantial and adequate buildings, equipment and staff, in 1880 (R. 79-95, 182-184, 251-252). It has ever since conducted a university of recognized rank. It has approximately 600 students, 90% of whom are residents of Minnesota (R. 184). The cost of educating them in tax-supported institutions would have been far more than the value of the tax exemption (R. 106, 185), and respondent's services to the state "greatly exceed the amount of taxes now or which are likely to be involved in the foreseeable future" (R. 252). Respondent has at all times complied with the terms of its charter and at no time did it abandon its object or its property (R. 180-184, 256-257).

PRINCIPAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Organic Act of the Territory of Minnesota, enacted on March 3, 1849, provided (section 6) "that the legislative power of the Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act * * *".

Respondent's charter was granted by the Territorial Assembly on March 3, 1854 (Laws of 1854, Chap. 43; R. 112-119). It provided:

"* * * all corporate property belonging to the institution, both real and personal is, and shall be free from taxation" (section 11).

On October 13, 1857, the people of the Territory, pursuant to the Act of Congress of February 26, 1857, authorizing a state government, adopted the Constitution of the State of Minnesota (*Minn. Stats. 1941*, pp. 24-54). Section 1 of the Schedule, which is a part of the Constitution (*Minn. Stats. 1941*, p. 51) provides:

"That no inconvenience may arise by reason of a change from a territorial to a permanent state government, it is declared that all rights * * * and contracts, as well of individuals as of bodies corporate, shall continue as if no change had taken place * * *."

Article 1, section 11 of the Constitution of Minnesota provides:

"No * * * law impairing the obligation of contracts shall ever be passed * * *" (*Minn. Stats. 1941*, p. 25.)

Article 1, section 10 of the Constitution of the United States provides:

"No state shall * * * pass any * * * law impairing the obligation of contract * * *"

THIS COURT IS WITHOUT JURISDICTION TO REVIEW

The Statute of a Territory Is Not a "Statute of the United States" or a "Statute of Any State."

Section 237 (b) of the Judicial Code authorizes review by certiorari of the judgment of a state court where is drawn in question "the validity of a * * * statute of the United States", or where is drawn in question "the validity of a statute of any State" on the ground of its being repugnant to the Constitution or laws of the United States.

The charter creating the contract of tax exemption was granted initially by the Territory of Minnesota. If the contract rests on the original grant there would be drawn in question the validity of a statute of the Territory. The review authorized by the Judicial Code is limited to cases involving the validity of statutes of the United States or of the states. It does not include the statute of a territory, whether it be held valid or invalid. *Scott vs. Jones*, 5 How. 343; *Miners' Bank vs. Iowa*, 12 How. 1; *Messenger vs. Mason*, 10 Wall. 507.

The power of Congress to disapprove the territorial act did not make the charter an Act of Congress rather than that of the territorial government. A territorial statute enacted under authority of Congress previously granted is to be treated as emanating from its immediate source and not as an Act of Congress. *Miners' Bank vs. Iowa*, *supra* (pp. 7-8); *Honolulu Rapid Transit & Land Co. vs. Wilder*, 211 U. S. 137, 142.

The only question that might arise under the Organic Act, under the authority of which the territory acted, would be one of interpretation, not of the validity, of that act, and therefore not one subject to review by this court.

The case of *Christianson vs. King County*, 239 U. S. 356, cited by petitioner, did not arise under section 237 (b) of

the Judicial Code relating to review by this court, but under sections 128 and 241, relating to the finality of judgments of circuit courts of appeal and review of decisions of those courts by the Supreme Court. The only limitation imposed by section 241 upon the review of judgments of circuit courts of appeal that are not made final by the Judicial Code is that the matter in controversy shall exceed one thousand dollars. It was therefore competent for this court to review a decision of a circuit court of appeals in a case involving the *construction* of a statute of the United States, whereas by section 237 (b) jurisdiction to review is limited to cases involving the *validity* of statutes of the states and of the United States.

The case of *Welch vs. Cook*, 7 Otto 541, has no application.

The State Court Sustained the Charter Exemption on an Adequate Non-federal Ground.

The trial court found that the charter was a contract the obligations of which are protected by the contract clause of article 1, section 10 of the Constitution of the United States and by article 1, section 11 of the Constitution of Minnesota, which provides that "no * * * law impairing the obligation of contracts shall ever be passed" (R. 179-180; *Minn. Stats. 1971*, p. 25). Its conclusions of law were to the same effect (R. 197). The decree adjudges that the charter constitutes a contract the obligations of which are protected against impairment by the cited provisions of both Constitutions (R. 208). The findings and conclusions were assigned as error by petitioner on appeal to the Supreme Court of Minnesota (R. 246, 248). That court, without specifically indicating whether its decision was based on one Constitution or on the other, affirmed the judgment without qualification (R. 261).

The opinion makes no mention of either article 1, section 10 of the Constitution of the United States, or article 1, section 11 of the Constitution of Minnesota.¹ Only four decisions of this court are cited in the opinion. One is *Board of Trustees for the Vincennes University vs. Indiana*, 14 How. 269 (R. 260), cited to the proposition that a territorial legislature has power to grant an act of incorporation and that the corporate powers were not affected and could not be affected by the Constitution of the state, which provided, as does the Constitution of Minnesota, for the continuance of all contracts. Another is *Perry vs. United States*, 294 U. S. 330 (R. 257), cited to the proposition that the adoption of the state Constitution could not change granted rights if these were contractual obligations. The others are *Home of the Friendless vs. Rouse*, 8 Wall. 430, and *Washington University vs. Rouse*, 8 Wall. 439 (R. 255), cited in subdivision 1 of the opinion which dealt solely with necessity of consideration to sustain a contract. The opinion states that these cases hold that grants of tax immunity of the type here involved are protected by the federal Constitution, and directly thereafter it quotes an excerpt from the former case dealing with consideration alone. By its passing reference to these cases in pointing out that consideration for the contract was present, the state court did nothing more than say that the consideration was present in this case as it was in those.

The court followed in all respects its earlier decision in *County of Nobles vs. Hamline University*, 46 Minn. 316, which presented the same questions as those presented in the case at bar (R. 258-259). The Constitution of the United States is not referred to in the pleadings, the record or the

¹In this respect the decision is like one in which no opinion is written and resort is had to the decision of the trial court to determine whether an exclusive federal question was presented. See *Wood Mowing & R. M. Co. vs. Skinner*, 139 U. S. 293; *Southwestern Bell Tel. Co. vs. Oklahoma*, 303 U. S. 206.

judgment in the Nobles County case (R. 173-195)^{1a} and no mention of it is made in the opinion, which holds "that the territorial legislature had the power to grant this exemption, and bind the future state" (p. 316).

In the County of Nobles case the state court followed its decision in *First Division St. P. & P. R. Co. vs. Parcher*, 14 Minn. 297. The opinion in the Parcher case makes no mention of the Constitution of the United States. In answer to the contention that even if the territorial legislature could bind the territory it had no power to alienate or abridge the sovereign authority of the future state, the court said that *Dartmouth College vs. Woodward*, 4 Wheat. 651, would be a sufficient answer, "But section 1 [the contract adoption provision] of the schedule of our constitution sets this matter at rest * * *." It then quotes the section and says, "This provision was perhaps unnecessary, *but it is at any rate decisive*" (p. 327). (Italics supplied.) Neither of these cases refer to any one of the several decisions of this court in which the federal Constitution was invoked to protect a contract of tax exemption.

If the state court did not rest its decision on the contract clause of the Constitution of the United States alone, the ground on which the decision otherwise rests is not important so long as it is not a federal one. While the contract impairment clause of the state Constitution is not mentioned in the opinion, its inclusion in the findings, conclusions and judgment of the trial court, affirmed by the state court, indicates that the decision was rested on that provision.

It is, as indicated by headnote 3² of the opinion (R. 249), also rested on the general proposition of law that the par-

^{1a}The certified copy of the files in the Nobles County case was in the record of this case (R. 158-159), but was not printed. The reference is to the printed record of the companion case, No. 358.

²"A valid legislative grant amounting to a contract may not be impaired by subsequent legislation."

ties to a valid contract are bound by its terms, as held in *Perry vs. United States*, *supra*, cited in the subdivision of the opinion supporting headnote 3 (R. 257), especially where the people by their Constitution have adopted the contract and assumed its performance. In *Perry vs. United States*, *supra*, this court held binding a governmental contract without resort to constitutional protections.

Furthermore, the state court, following its earlier decisions, relied upon and stressed (R. 253-254, 260, 261) the contract adoption provision (Schedule, section 1) in the state Constitution as one which in and of itself prohibited executive and legislative action in violation of its terms, as did also the trial court (R. 179).

From the record and from the state court's opinion it is plain that the decision rests on one or more of three grounds, viz.: the impairment of contract clause of the state Constitution, the inviolability of a contract under general law, and the contract adoption provision of the state Constitution; and if it may fairly be said that it rests on any one of them this court is without jurisdiction.

"It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the termination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. * * * Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. * * *

Lynch vs. New York, 293 U. S. 52, 54-55, citing numerous cases.

Rule 20 of the Supreme Court of Minnesota (212 Minn., p. XLVI) permits an application for rehearing within ten days after the filing of the decision. Petitioner's failure to avail itself of this means of having the state court specify the basis of its determination warrants denial of the petition. See *Lynch vs. New York, supra* (p. 55).

NO REASON FOR ALLOWING THE WRIT IS PRESENTED

The case presents no element which under the rules of this court, or upon any other consideration, warrants review, if the court should determine that it has jurisdiction.

1. Basically, a writ to review is granted only when the state court "has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court" (Rule 38, 5 (a)).

Assuming that a federal question is presented, that question has been decided by this court many times. The decision of the state court conforms to all of the decisions of this court, from *New Jersey vs. Wilson*, 7 Cranch 164, decided in 1812, to now.

2. If it be thought that the court should, as suggested in the petition and supporting brief, decide whether a contract of tax exemption for a continuing consideration by any government in the American system would constitute an impairment of sovereignty, attention is directed to repeated decisions of that question by this court and discussions of it in both majority and minority opinions.

Piqua Branch of State Bank of Ohio vs. Knoop, 16 How. 369.

Jefferson Branch Bank vs. Skelly, 1 Black 436.

The Home of the Friendless vs. Rouse, 8 Wall. 430.

The Washington University vs. Rouse, 8 Wall. 439.

The Wilmington & Weldon Railroad Co. vs. Reid, 13 Wall. 264.

The East Saginaw Salt Mfg. Co. vs. City of East Saginaw, 13 Wall. 373.

Humphrey vs. Pegues, 16 Wall. 244.

Furthermore, at least where the contract is affirmed by the state Constitution itself, the question is one of state sovereignty and beyond federal control or restriction so long as the state maintains a republican form of government, and that is a political, not a judicial, inquiry. *Highland Farms Dairy vs. Agnew*, 300 U. S. 608, 612.

3. The history of respondent's charter itself presents cogent reasons for refusing the writ. The charter was granted in 1854 (Laws 1854, Chap. 43). More than fifty years ago the Supreme Court of Minnesota sustained the tax exemption provision of the charter against the same objections as those made now. *County of Nobles vs. Hamline University, supra*. More than 25 years ago the same court sustained the exemption against the claim that a limitation in the charter had been transgressed. *State vs. W. L. Harris Realty Company*, 148 Minn. 20. In 1930 the exemption was sustained by a default judgment of the District Court of Ramsey County in a proceeding for registration of title in which the state was a party defendant (R. 190). In 1940 it was again sustained by a judgment entered, on default by the state and on stipulation by the county, by the District Court of Redwood County in a like proceeding (R. 191-192, 242-244). Between 1929 and 1938 the validity of the exemption was admitted and sustained by judgments or orders for judgment upon stipulation in the District Court of Ramsey County in ten separate proceedings instituted for the enforcement of

taxes sought to be levied on respondent's real estate (R. 189, 190, 226-241).

Aside from these fruitless, and by the Ramsey County authorities frivolous, attacks upon the charter, the validity of the exemption has uniformly been recognized by the taxing authorities (R. 186) and upheld by numerous opinions promulgated by the Attorney General of Minnesota (R. 234-242).^{2a} The present decision of the Supreme Court of Minnesota should stand and respondent be freed of further litigation.

4. The language of the opinion in this case clearly shows that the state has been more than repaid for the exemption from taxation (R. 252, 254-255; see also R. 106, 185). There is nothing in the record to substantiate the claim that the grant was improvident.

5. Contractual exemptions from taxation like that contained in respondent's charter are held by many educational and charitable institutions and others. Some are evidenced by the reports of this court and of state courts. Some are even older than is respondent's. All have been relied upon for long periods of time. Reopening at this late date the question of their validity, which has been settled by decisions of this court running back more than a hundred years, would be of deepest concern to these institutions. It should be deferred until such time as this court may be compelled to do so on appeal from a decision striking down an exemption (e. g., *Trustees of Pillsbury Academy vs. Minnesota*, 204 Minn. 365, 308 U. S. 506), or at least until there is presented a petition for a writ which shows indubitably that the decision of the state court rests on a federal ground.

^{2a}These opinions are part of the record (R. 165), but were not printed. The reference is to the printed record in the companion case, No. 358.

ARGUMENT

The argument will in the main follow the order of petitioner's brief.

Summary of State Court's Opinion.

Petitioner's argument under this head calls for brief comment.

The state court followed *County of Nobles vs. Hamline University, supra*, and *State vs. W. L. Harris Realty Co., supra*, which were in turn based on *First Division St. P. & P. R. Co. vs. Parcher, supra*. The Parcher case involved the validity of a territorial charter which, in consideration of a commuted system of taxation, exempted from tax certain granted lands. The property of the corporation, including the franchises, was acquired by the state under mortgage foreclosure and thereafter transferred to First Division St. P. & P. R. Company. The court held, against the same objections as those presented here, that the territorial legislature had power to make the contract, that the exemption did not invade the protection afforded non-residents by the Organic Act, and that the contract was binding on the state, resting the latter ground on the contract adoption clause of the state Constitution.

State vs. Great Northern R. Co., 106 Minn. 303 (affirmed, 216 U. S. 206), cited by petitioner, arose under the same initial charter and involved the question whether the commuted tax provision exempting from taxation property other than the granted lands involved in the Parcher case survived acquisition by the state of the corporation's property and franchises under mortgage foreclosure subsequent to the adoption of the state Constitution which required that all property be taxed, their restoration to the corporation, their reacquisition by the state by forfeiture, their transfer by the

state to a new corporation, their acquisition by another corporation through mortgage foreclosure, and their transfer to still another corporation.

The court decided only that the charter provision, so far as the commuted tax feature was concerned, was personal to the corporation and not subject to transfer, and that the subsequent legislative acts passed no exemption to the new company because exemptions were then prohibited by the state Constitution. It said the right of a state through its legislature to limit by contract its power of taxation when not restricted by constitutional provisions is "too firmly established to admit of discussion at this time. * * * The question must be deemed for present purposes completely at rest" (p. 322). After pointing out that a fair construction of the language would seem to justify the conclusion that the tax exemption was not irrevocable, it said:

"We are, of course, not to be understood as intimating an opinion that a contract of the tenor and effect of the one claimed could not legally have been entered into by the territory * * *" (p. 324).

That decision leaves undisturbed the holding in the *Parcher* case which was followed in the *County of Nobles* case, and expressly approved in the state court's opinion in the case at bar.

Petitioner's brief (p. 14) says that the court's opinion in the case at bar "clearly indicated that it was only a contract right such as would be protected by the United States Constitution that the grant of exemption was affected by the first provision of the Schedule" and quotes the statement in the opinion that the state Constitution could not change respondent's granted rights "if these were contractual obligations". This statement is nothing more than that there was a *contract*. The court later points out (R. 260) that by the adoption of the Constitution the people recognized and as-

sumed the contract, and makes no mention of the contract clause of the Constitution of the United States.

Similarly, petitioner's brief (p. 15) states that in the *Parcher* case it was held that the charter was a contract "protected by the United States Constitution". As has already been pointed out, what was said in the *Parcher* case was that the doctrine of *Dartmouth College vs. Woodward*, *supra*, would be sufficient basis for holding that the territorial contract was binding on the succeeding state, but that the contract adoption clause of the state Constitution "sets the matter at rest" and "is decisive" (p. 327).

The Territory had Power to Contract for an Irrevocable Tax Exemption.

The legislative power granted the territory by the Organic Act (section 6) extended to "all rightful subjects of legislation". The legislative and contract authority of the territory is as broad as that of a state. *Clinton vs. Englebrecht*, 13 Wall. 434; *Maynard vs. Hill*, 125 U. S. 190; *Cope vs. Cope*, 137 U. S. 682; *W. C. Peacock & Co. vs. Pratt* (C. C. A. 9), 121 Fed. 772, 775; *Kitagawa vs. Shipman* (C. C. A. 9), 54 F. (2d) 313; *Yerian vs. Territory of Hawaii* (C. C. A. 9), 130 F. (2d) 786; *Bennett vs. Nichols*, 9 Ariz. 138; *Winona & St. P. & P. R. Co. vs. County of Deuel*, 3 Dak. 1; *First Division St. P. & P. R. Co. vs. Parcher*, *supra* (pp. 326-327).

A state may make a contract granting an irrevocable exemption from taxation. *Piqua Branch of State Bank of Ohio vs. Knoop*, *supra*; *Jefferson Branch Bank vs. Skelly*, *supra*; *The Home of the Friendless vs. Rouse*, *supra*; *The Washington University vs. Rouse*, *supra*; *East Saginaw Salt Manufacturing Co. vs. City of East Saginaw*, *supra*; *Humphrey vs. Pegues*, *supra*; *The Northwestern University vs. People*, 99 U. S. 309; *St. Anna's Asylum vs. City of New Orleans*, 105 U. S. 362.

A Legislative Grant of Exemption From Taxation Is Not an Impairment of a Sovereign Power.

For well over a century the established law in this country has been that a legislative grant of exemption from taxation based on a consideration is a valid contract.

Dissenting opinions in some cases argue that a sovereign power may not be impaired. The answer has been made that "it is of the essence of sovereignty to be able to make contracts and give consents upon the exertion of governmental power". *United States vs. Bekins*, 304 U. S. 27, 52 (citing among other cases *New Jersey vs. Wilson*, *supra*, and *Jefferson Branch Bank vs. Skelly*, *supra*,³ both of which involve contracts of tax exemption). And again the answer given to the argument that "the government cannot by contract restrict the exercise of a sovereign power" is that "the right to make binding obligations is a competence attaching to sovereignty". *Perry vs. United States*, *supra*, p. 353. See also 57 *Harvard Law Review* (May, 1944) 640, 653-654.

The argument of the dissents to the effect that taxation is like eminent domain and police power, which latter cannot be contracted away, is unsound. See *Stone vs. Mississippi*, 11 Otto 814, 820. Police power and eminent domain are direct governmental controls exercised over persons and property. These must be retained in kind to be effective. But taxation is only to raise revenue, and this can be accomplished in many different ways. Any one source of taxation is not vital. A dollar is a dollar from whatever source derived. Taxation is, like borrowing money, a matter of finance, and the power of the state to contract in this field is well recognized and is a matter of public necessity and

³These two cases were cited in *First Division St. P. & P. R. Co. vs. Parcher*, 14 Minn. 297, *supra*, in answer to the argument that the taxing power is a sovereign power which the legislature may not alienate or abridge.

convenience. A state may by contract borrow money and agree to pay it back, binding future legislatures; so a state may for a consideration agree not to take money in the future—not to tax the property out of the use of which the consideration flows. They are but different ways of securing the public service that is to be performed.

Nor is the other argument of the dissenting opinion valid—that the power to contract for tax exemption should not exist because it may be abused. Any legislative power may be abused, some even to jeopardize the existence of the state, such as the powers to borrow money, to appropriate and spend money, and to dispose of state property. But this does not mean that the powers do not exist. If control of them is necessary, limitations on them may be put in the constitutions. In the present case, far from any abuse of the tax exemption, there is evident noteworthy public service and a contract favorable to the state.

The Grant of Tax Exemption Was Not Violative of Any Restriction Upon the Powers of the Territory.

The Organic Act (section 6) provides that the lands and other property of non-residents shall not be taxed higher than the lands and other property of residents. Assuming that the corporation is a resident within the meaning of this language (quaere, see *First Division St. P. & P. R. Co. vs. Parcher*, *supra*), the restriction prohibits discrimination only against the citizens of another state as such. *Logan vs. Young*, 191 Minn. 371. In any event, that question could be raised only by a non-resident affected.

In *Berryman vs. Whitman College*, 222 U. S. 334, cited by petitioner, the court assumed that a valid contract of exemption could be granted by a territory in the absence of express limitations, and held only that the Organic Act of Washington contained such a limitation.

The 5th Amendment has no application. Even the equal protection clause of the 14th Amendment does not prohibit exemptions from taxation. *Chicago vs. Sheldon*, 9 Wall. 50; *Mobile & Ohio R. Co. vs. Tennessee*, 153 U. S. 486; *New York ex rel. Metropolitan Street R. Co. vs. State Board of Tax Commissioners*, 199 U. S. 1. Scores, if not hundreds, of tax exemptions have been sustained by the courts and there appears to be no case where such exemption has been struck down on the ground that it denied equal protection of the law or that it took property without due process of law. Furthermore, only one who has been injured may raise the question.

No question under article 1, sections 8 and 9 of the Constitution of the United States was raised in the state court. Furthermore, the requirement of uniformity in section 8 applies only to duties, imports and excises; and the only provisions in section 9 relating to taxation are that direct taxes shall be laid in proportion to population and that taxes shall not be laid on exports from states.

The Territory Was Without Power to Revoke the Contract of Exemption.

Having exercised its authority with respect to a "rightful subject of legislation", i. e., the granting of the exemption, the territory was without authority to repudiate or revoke it. That is a rule of general law, applicable to governmental bodies as well as individuals. *Sinking Fund Cases*, 9 Otto 700, 718; *Lynch vs. United States*, 292 U. S. 571; *Perry vs. United States*, *supra*, pp. 351-353.

The Organic Act provided that legislation passed pursuant thereto "shall be submitted to the Congress * * * and, if disapproved, shall be null and of no effect". While Congress thus had power to disapprove, the territorial act nevertheless remained in full force and effect unless and until Con-

gress exercised that power. *Atchison, T. & S. F. R. Co. vs. Sowers*, 213 U. S. 55; *Denver & Rio Grande R. Co. vs. Wagner* (C. C. A. 8), 167 Fed. 75. Since there was no disapproval, respondent's charter was in full force and effect when the people of the territory changed their form of government and by their Constitution continued the contract.

The territorial statute is to be treated as emanating from its immediate source and not as an Act of Congress. *Miners' Bank vs. Iowa*, *supra*, pp. 7-8; *Honolulu Rapid Transit & Land Co. vs. Wilder*, *supra*, p. 142.

Respondent's contract was with the territory, not with Congress; and the termination of the life of the territory before the exercise by Congress of its power to disapprove left the charter and all of its provisions a valid and enforceable contract at the moment it was assumed by the state through the inclusion in the state Constitution of the Schedule continuing existing contracts.

The Contract of Exemption Is Binding on the State Both Under General Law and Under the State Constitution.

A change in the form of government does not extinguish its obligations or destroy existing rights. *The Board of Trustees for the Vincennes University vs. Indiana*, *supra*; *Dartmouth College vs. Woodward*, 4 Wheat. 518; *New Jersey vs. Wilson*, *supra*; *Baxter vs. State of Wisconsin*, 9 Wis. 38; *Jewell Nursery Company vs. State*, 4 S. D. 213.

In addition, the Schedule of the state Constitution adopted by the people of the territory specifically continued existing contracts.

The Charter Exemption Was Not Repealed by the Act Admitting Minnesota to the Union.

It has never been thought that holding a state to a contract made by its predecessor government prevents its admission to the Union on an equal footing with the original states. If otherwise that were a discrimination, the short answer is that the original states likewise were bound by contracts made by predecessor governments: the King in *Dartmouth College vs. Woodward*, *supra*, and the Colony in *New Jersey vs. Wilson*, *supra*. And if that were not enough, the people of Minnesota in their Constitution voluntarily adopted and continued respondent's charter contract.

The Right to Exemption Has Not Been Lost By Non-compliance With the Charter.

Whether it be called a franchise, a right, or a privilege, a contract for exemption from taxation is an integral part of the corporate charter. The cases cited in petitioner's brief under this head (p. 20) hold no more than such a right cannot be *transferred* unless it inheres in particular property. The holding in *Morgan vs. Louisiana*, 3 Otto 217 (which cites with approval *Home of the Friendless vs. Rouse*, *supra*), falls short even of that. The ultimate decision is that "such immunity is not itself a franchise of a railroad corporation which passes as such without other description to a purchaser of its property". The exemption from taxation of the corporation's property continues at least as long as it is devoted to its own corporate purposes, in this case the maintenance of the University.

The claim of non-compliance is based on the fact that respondent's teaching functions were temporarily suspended. This was due to the depression following the Civil War, a nation-wide financial crisis, grasshopper and other insect

plagues, low prices for agricultural products, and general hard times, and was accompanied by constant and unremitting efforts to resume teaching. (See statement of facts, *supra*, pp. 1-2.) The trial court found that respondent has at all times complied with its charter (R. 180) and that at no time did it abandon its charter or object or property (R. 183). The Supreme Court of the state held that "the suspension was not a voluntary one; rather, it was caused by forces beyond the control of any human agency" (R. 256) and sustained a finding that there was "neither abandonment nor surrender of the grant" (R. 257).

The same issue was tried and disposed of in favor of respondent in the County of Nobles case in 1891 (R. 173-192).^{3a}

Furthermore, under Minnesota law the state can avail itself of the claim of abandonment only through a quo warranto proceeding brought for that purpose (R. 257-258).

State vs. Minnesota Central R. Co., 36 Minn. 246, 258.

Richards vs. Minnesota Savings Bank, 75 Minn. 196.

Cf. *State vs. W. L. Harris Realty Co.*, *supra*.

It is respectfully submitted that the petition should be denied.

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^{3a}See footnote 1a on p. 7.

